

RESOLUTION NO. _____

RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS APPROVING AND AUTHORIZING THE EXECUTION OF THE FIRST AMENDMENT TO THE AGREEMENT OF PURCHASE AND SALE BETWEEN THE CITY OF MILPITAS AND THE REDEVELOPMENT AGENCY AND APPROVING AND AUTHORIZING THE EXECUTION OF AN AMENDED AND RESTATED PROMISSORY NOTE

WHEREAS, the redevelopment plan for the Milpitas Redevelopment Project Area No. 1 (“**Project Area**”) was adopted by the City Council of the City by Ordinance No. 192 on September 21, 1976 (as thereafter amended, the “**Redevelopment Plan**”); and

WHEREAS, pursuant to Community Redevelopment Law (California Health and Safety Code Section 33000 *et seq.*) (the “**CRL**”), the Redevelopment Agency of the City of Milpitas (“**Agency**”) has responsibility to carry out the Redevelopment Plan for the Project Area; and

WHEREAS, on September 7, 2004 the City of Milpitas (“**City**”) and the Agency entered into an Agreement of Purchase and Sale (“**Agreement**”) whereby the Agency purchased eight parcels of land (“**Property**”) from the City; and

WHEREAS, Agency gave City a promissory note for the purchase price of the Property in the principal amount of Twenty-Nine Million Three Hundred Thousand Dollars (\$29,300,000) (“**Loan**”); and

WHEREAS, Agency and City have subsequently discovered that the Agency provided prior assistance to the City to purchase a portion of the Property in accordance with the CRL; and

WHEREAS, Agency and City now wish to amend the Agreement (“**Amendment**”) to reduce the purchase price of the Property from Twenty-Nine Million Three Hundred Thousand Dollars (\$29,300,000) to Twenty Million Four Hundred Fifty-Five Thousand One Hundred Ninety-One Dollars (\$20,455,191) (“**Amended Purchase Price**”); and

WHEREAS, Agency and City now wish to enter into an amended and restated promissory note (“**Promissory Note**”) to evidence the Amended Purchase Price and to clarify the repayment terms of Agency; and

WHEREAS, the Amendment will be of benefit to the residents of the Project Area and the City and is consistent with, and shall facilitate the implementation of the Redevelopment Plan.

NOW, THEREFORE, THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Finds that the execution of the Amendment and the Promissory Note substantially in the forms presented to the Agency Governing Board and on file with the Agency

Secretary will further the implementation of the Redevelopment Plan and is in the best interests of the Agency and the City.

Section 2. Approves the Amendment, and authorizes the Executive Director of the Agency to execute the Amendment substantially in the form on file with the Agency Secretary, with such modifications as the Executive Director may approve with the advice of Agency Counsel.

Section 3. Approves the Promissory Note, and authorizes the Executive Director of the Agency to execute the Promissory Note substantially in the form on file with the Agency Secretary, with such modifications as the Executive Director may approve with the advice of Agency Counsel.

PASSED AND ADOPTED at a meeting of the Redevelopment Agency of the City of Milpitas held on this _____ day of _____, 2007, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, Agency Secretary

Jose S. Esteves, Chairperson

APPROVED AS TO FORM:

Steven T. Mattas, Agency Counsel

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING
EXECUTION OF THE FIRST AMENDMENT TO THE AGREEMENT OF PURCHASE
AND SALE BETWEEN THE CITY OF MILPITAS AND THE REDEVELOPMENT
AGENCY OF THE CITY OF MILPITAS AND APPROVING AN AMENDED AND
RESTATED PROMISSORY NOTE**

WHEREAS, the redevelopment plan for the Milpitas Redevelopment Project Area No. 1 (“**Project Area**”) was adopted by the City Council of the City by Ordinance No. 192 on September 21, 1976 (as thereafter amended, the “**Redevelopment Plan**”); and

WHEREAS, pursuant to Community Redevelopment Law (California Health and Safety Code Section 33000 *et seq.*) (the “**CRL**”), Redevelopment Agency of the City of Milpitas (“**Agency**”) has responsibility to carry out the Redevelopment Plan for the Project Area; and

WHEREAS, on September 7, 2004 the City of Milpitas (“**City**”) and the Agency entered into an Agreement of Purchase and Sale (“**Agreement**”) whereby the Agency purchased eight parcels of land (“**Property**”) from the City; and

WHEREAS, Agency gave City a promissory note for the purchase price of the Property in the principal amount of Twenty-Nine Million Three Hundred Thousand Dollars (\$29,300,000) (“**Loan**”); and

WHEREAS, Agency and City have subsequently discovered that the Agency provided prior assistance to the City to purchase a portion of the Property in accordance with the CRL; and

WHEREAS, Agency and City now wish to amend the Agreement (“**Amendment**”) to reduce the purchase price of the Property from Twenty-Nine Million Three Hundred Thousand Dollars (\$29,300,000) to Twenty Million Four Hundred Fifty-Five Thousand One Hundred Ninety-One Dollars (\$20,455,191) (“**Amended Purchase Price**”); and

WHEREAS, Agency and City now wish to enter into an amended and restated promissory note (“**Promissory Note**”) to evidence the Amended Purchase Price and to clarify the repayment terms of Agency; and

WHEREAS, the Amendment will be of benefit to the residents of the Project Area and the City and is consistent with, and shall facilitate the implementation of the Redevelopment Plan.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MILPITAS
DOES HEREBY RESOLVE AS FOLLOWS:**

Section 1. Finds that the execution of the Amendment substantially in the form presented to the Agency Governing Board and on file with the City Clerk will further the

implementation of the Redevelopment Plan and is in the best interests of the Agency and the City.

Section 2. Approves the Amendment and the Promissory Note, and authorizes the City Manager to execute the Amendment substantially in the form on file with the City Clerk, with such modifications as the City Manager may approve with the advice of the City Attorney.

PASSED AND ADOPTED this _____ day of _____, 2007, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Steven T. Mattas, City Attorney

FIRST AMENDMENT TO AGREEMENT OF PURCHASE AND SALE

This First Amendment to Agreement of Purchase and Sale (this “**Amendment**”) amending that certain Agreement of Purchase and Sale (“**Agreement**”) dated September 7, 2004 by and between the City of Milpitas (“**City**”) and the Redevelopment Agency of the City of Milpitas (“**Agency**”) is made as of dated August 21, 2007 (“**Amendment Date**”) by and between the City and the Agency. City and Agency are collectively referred to herein as the “Parties.” Capitalized terms shall have the meaning set forth in the Agreement.

RECITALS

A. The redevelopment plan for the Milpitas Redevelopment Project Area No. 1 (“**Project Area**”) was adopted by the City Council of the City by Ordinance No. 192 on September 21, 1976 (as thereafter amended, the “**Redevelopment Plan**”).

B. Pursuant to Community Redevelopment Law (California Health and Safety Code Section 33000 *et seq.*) (the “**CRL**”), Agency has responsibility to carry out the Redevelopment Plan for the Project Area.

C. Section 33445 of the CRL authorizes redevelopment agencies to pay all or a part of the value of the land for and the cost of the installation and construction of any building, facility structure or other improvement that will be publicly owned, either inside or outside the project area.

D. City and Agency entered into the Agreement for the acquisition by Agency of eight parcels of real property located in the Project Area and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (“**Property**”).

E. Pursuant to the Agreement, Agency purchased the Property from City for Twenty-Nine Million Three Hundred Thousand Dollars (\$29,300,000) (“**Purchase Price**”) based on an independent appraisal of the Property.

F. City and Agency subsequently determined that, pursuant to the CRL, Agency financially assisted in the property acquisition and or construction of improvements on four of the parcels comprising the Property.

G. City and Agency wish to reduce the Purchase Price to Twenty Million Four Hundred Fifty-Five Thousand One Hundred Ninety-One Dollars (\$20,455,191) (“**Amended Purchase Price**”) to reflect the prior Agency assistance.

I. City and Agency wish to enter into an amended and restated promissory note to evidence the Amended Purchase Price and to clarify repayment terms of the Agency.

H. This Amendment will be of benefit to the residents of the Project Area and the City and is consistent with, and shall facilitate the implementation of the Redevelopment Plan.

NOW THEREFORE, City and Agency hereby agree to amend the Agreement as follows:

Section 2. Purchase Price is hereby replaced in its entirety as follows:

The amended purchase price for the Property (“**Amended Purchase Price**”) shall be Twenty Million Four Hundred Fifty-Five Thousand One Hundred Ninety-One Dollars (\$20,455,191). The Amended Purchase Price shall be allocated among the parcels that comprise the Property as set forth in Exhibit A of the Amendment.

Section 3. Payment of Purchase Price is hereby replaced in its entirety as follows:

Agency shall pay the Amended Purchase Price to City pursuant to an amended and restated promissory note (the “**Amended and Restated Promissory Note**”) substantially in the form attached to the Amendment as Exhibit B. The obligation of Agency to make payments pursuant to the Amended and Restated Promissory Note shall be subordinate to all indebtedness of Agency existing as of the Effective Date or subsequently incurred with the approval of City.

IN WITNESS WHEREOF, City and Agency have executed this Amendment as of the Amendment Date.

CITY OF MILPITAS

**MILPITAS REDEVELOPMENT
AGENCY**

By: _____

By: _____

Its: Mayor

Its: Executive Director

ATTEST:

ATTEST:

City Clerk

Agency Secretary

APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney

Agency Counsel

Exhibit A

PROPERTY
ALLOCATION OF AMENDED PURCHASE PRICE

<u>APN No.</u>	<u>Property</u>	<u>2004 Appraised Value</u>	<u>Amended Purchase Price</u>
1) 022-08-041	163 N. Main Street	\$2,000,000	\$ 862,592
2) 022-08-042	South of Devries House	2,020,000	1,250,552
3) 028-24-019	160 N. Main (Old Senior Center)	2,640,000	2,640,000
4) 028-04-047	1275 N. Milpitas (Police Station)	8,500,000	2,375,104
5) 028-12-011	455 E. Calaveras Blvd. (excluding City Hall)	5,940,000	5,940,000
6) 086-11-008	777 S. Main Street (Fire Station 1)	6,240,000	6,240,000
7) 026-13-033	45 Midwick (Fire Station 3)	890,000	890,000
8) 086-02-061	775 Barber Lane (Fire Station 4)	<u>1,070,000</u>	<u>256,943</u>
		<u>\$29,300,000</u>	<u>\$20,455,191</u>

Exhibit B

AMENDED AND RESTATED PROMISSORY NOTE

FOR VALUE RECEIVED, the Redevelopment Agency of the City of Milpitas, a public agency ("**Maker**"), promises to pay to the City of Milpitas, a municipal corporation ("**Holder**"), in lawful money of the United States of America, the principal sum of Twenty Million Four Hundred Fifty-Five Thousand One Hundred Ninety-One Dollars (\$20,455,191) ("**Loan**"), or so much thereof as may be outstanding from time to time hereunder pursuant to the Amended Agreement referred to below, together with interest on the outstanding principal balance in accordance with the terms and conditions described herein. Interest shall be calculated on the basis of a year of 365 days, and charged for the actual number of days elapsed.

This Note has been executed and delivered pursuant to and in accordance with the terms and conditions of the Agreement of Purchase and Sale, dated as of September 7, 2004 and amended by a First Amendment Dated August 21, 2007, by and between Maker and Holder (together, the "**Amended Agreement**"), and is subject to the terms and conditions of the Amended Agreement, which are, by this reference, incorporated herein and made a part hereof. Capitalized terms used in this Amended and Restated Promissory Note (this "**Note**") without definition shall have the meanings ascribed to such terms in the Amended Agreement.

1. TERMS OF LOAN

1.1. Term. The term of the Loan is forty (40) years from the Effective Date (September 7, 2044, the "**Maturity Date**").

1.2. Interest Rate. The outstanding principal balance of the Loan shall accrue interest at the fixed rate of ten percent (10%) simple interest per year. Interest shall not compound from year to year, and the maximum amount of interest to be paid by Maker to Holder under this Note shall not exceed Eighty-one Million Eight Hundred Twenty Thousand Seven Hundred Sixty Four Dollars (\$81,820,764).

1.3. Repayment of the Loan. Principal and accrued interest, or any portion thereof from time to time outstanding under this Note, shall be payable on demand within thirty (30) days after demand is made by Holder to Maker, or if no demand is made, on the Maturity Date.

1.4. Manner of Payment. All payments of principal and interest on this Note shall be made by certified or bank cashier's check payable to Holder at 455 E. Calaveras Boulevard, Milpitas, CA 95035-5479 or at such other place as Holder shall designate to Maker in writing, or by wire transfer of immediately available funds to an account designated by Holder in writing, or in Holder's discretion, by ledger and book entry transfers.

1.5. Prepayment of Loan. Maker may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note. Any partial prepayments shall be applied first to accrued but unpaid interest and then to principal.

2. DEFAULTS

2.1. Events of Default. The occurrence of any one or more of the following events with respect to the Maker shall constitute an event of default hereunder ("**Event of Default**"):

(a) If Maker shall fail to pay when due any payment of principal or interest on this Note and such failure continues for fifteen (15) days after Holder notifies maker thereof in writing.

(b) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors (a "Bankruptcy Law"), Maker shall (i) commence a voluntary case or proceeding; (ii) consent to the entry of an order for relief against it in an involuntary case; (iii) consent to the appointment of a trustee, receiver, assignee, liquidator or similar official; (iv) make an assignment for the benefit of its creditors; or (v) admit in writing its inability to pay its debts as they become due.

(c) If a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Maker in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Maker or substantially all of Maker's properties, or (iii) orders the liquidation of Maker, and in each case the order or decree is not dismissed within 120 days.

2.2. Notice by Maker. Maker shall notify Holder in writing within five days after the occurrence of any Event of Default of which Maker acquires knowledge.

2.3. Remedies. Upon the occurrence of an Event of Default hereunder (unless the Event of Default has been cured by Maker or waived by Holder), Holder may, at its option, (i) by written notice to Maker, declare the entire unpaid principal balance of this Note, together with all accrued interest thereon, immediately due and payable regardless of any prior forbearance, and (ii) exercise any and all rights and remedies available to it under applicable law, including, without limitation, the right to collect from Maker all sums due under this Note. Maker shall pay all reasonable costs and expenses incurred by or on behalf of Holder in connection with Holder's exercise of any or all of its rights and remedies under this Note, including, without limitation, reasonable attorneys' fees.

3. MISCELLANEOUS

3.1. Waiver. The rights and remedies of Holder under this Note shall be cumulative and not alternative. No waiver by Holder of any right or remedy under this Note shall be effective unless in a writing signed by Holder. Neither the failure nor any delay in exercising any right, power or privilege under this Note will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege by Holder will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law, (a) no claim or right of Holder arising out of this Note can be discharged by Holder, in whole or in part, by a waiver or renunciation of the claim or right unless in a writing, signed by Holder; (b) no waiver that may be given by Holder will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on Maker will be deemed to be a

waiver of any obligation of Maker or of the right of Holder to take further action without notice or demand as provided in this Note. Maker hereby waives presentment, demand, protest and notice of dishonor and protest.

3.2. Notices. Any notice required or permitted to be shall be given in accordance with Section 10 of the Amended Agreement.

3.3. Severability. If any provision in this Note is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Note will remain in full force and effect. Any provision of this Note held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

3.4. Governing Law. This Note will be governed by the laws of the State of California without regard to conflicts of laws principles.

3.5. Parties In Interest. This Note shall bind Maker and its successors and assigns and shall accrue to the benefit of Holder and its successors and assigns.

3.6. Section Headings, Construction. The headings of Sections in this Note are provided for convenience only and will not affect its construction or interpretation.

IN WITNESS WHEREOF, Maker has executed and delivered this Note as of the date first stated above.

MAKER

**REDEVELOPMENT AGENCY
OF THE CITY OF MILPITAS**

By: _____

Its: Executive Director

ATTEST:

Agency Secretary

APPROVED AS TO FORM:

Agency Counsel